

**The  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Florida Food Products, Inc.	)	File No. EB-04-TP-037
	)	NAL/Acct. No. 200432700015
Owner of an Unregistered Antenna Structure	)	FRN 0001801687
Eustis, Florida	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 6, 2006**

**Released: September 8, 2006**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”) we deny the petition for reconsideration filed by Florida Food Products, Inc. (“FFP”), owner of an unregistered antenna structure in Eustis, Florida. FFP seeks reconsideration of the *Forfeiture Order*<sup>1</sup> in which the Chief, Enforcement Bureau (“Bureau”) found it liable for a monetary forfeiture in the amount of three thousand dollars (\$3,000) for willful and repeated violation of the registration requirements of Section 17.4(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violation involves FFP’s failure to register its antenna structure.

**II. BACKGROUND**

2. On a January 26, 2004 inspection, an agent from the Commission’s Tampa, Florida Field Office (“Tampa Office”) determined that FFP’s antenna structure was not registered.<sup>3</sup> On March 15, 2004, the Tampa Office issued to FFP a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$3,000 for apparent willful and repeated violation of the registration requirements of Section 17.4(a) of the Rules.<sup>4</sup> In its response, FFP did not dispute the *NAL*’s findings but argued that it was entitled to relief for attempting to comply with the Commission’s registration requirements after the Tampa Office notified FFP of the lack of registration.

3. The *Forfeiture Order* affirmed the *NAL*, and the Bureau issued a \$3,000 forfeiture to FFP for willful and repeated violation of Section 17.4(a) of the Rules. In addition, the *Forfeiture Order* required, pursuant to Section 308(b) of the Communications Act of 1934, as amended, (“Act,”)<sup>5</sup> that FFP

<sup>1</sup> *Florida Food Products, Inc.*, 19 FCC Rcd. 24,923 (Enf. Bur. 2004) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. § 17.4(a).

<sup>3</sup> Because FFP’s antenna structure exceeded 200 feet and was subject to Federal Aviation Administration notification, the Rules require that the structure be registered with the Commission. See 47 C.F.R. § 17.4(a); see also 47 C.F.R. § 17.7(a).

<sup>4</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432700015 (Enf. Bur., Tampa Office, released March 15, 2004).

<sup>5</sup> 47 U.S.C. § 308(b)

report to the Bureau within thirty (30) days of the release of the *Forfeiture Order* whether it had achieved compliance with Section 17.4(a) of the Rules. In a timely-filed request for reconsideration, FFP notified the Commission that the tower had been demolished on September 14, 2004, and it further requested that the *Forfeiture Order* be reconsidered.

### III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>8</sup> In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>9</sup> As discussed below, we have considered FFP's response in light of these statutory factors and have determined that no reduction of the assessed forfeiture is warranted.

5. Section 17.4(a)(2) of the Rules<sup>10</sup> provides that, effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notification to the Federal Aviation Administration ("FAA") must register the structure with the Commission. Section 303(q) of the Act<sup>11</sup> requires the tower owner to maintain painting and lighting of the tower as the Commission prescribes.

6. In addition, Section 17.4(a)(2) of the Rules provides that the owner of an antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996 must register the structure prior to July 1, 1998. FFP concedes that it was the owner of this antenna structure. Accordingly, FFP was required to give notice to the FAA, and register the structure with the Commission. The Commission holds the owner of an antenna structure primarily responsible for awareness of and compliance with its Rules.<sup>12</sup> Accordingly, we conclude that it was FFP's responsibility to register the antenna structure. FFP's failure to register the tower in a timely manner is significant; the Commission has repeatedly found that registration of towers is of utmost importance in the interests of public safety.<sup>13</sup>

7. The Commission's requirement of tower registration is integral to its oversight of all tower owners' compliance with painting and lighting specifications.<sup>14</sup> FFP's attempt to have its

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<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>10</sup> 47 C.F.R. § 17.4(a)(2).

<sup>11</sup> 47 U.S.C. §303(q).

<sup>12</sup> See, e.g. *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 ¶¶ 6-7 (2002).

<sup>13</sup> *AT&T Wireless Services, Inc.*, 16 FCC Rcd. 6805, 6806 ¶ 8 (Enf. Bur. 2001) ("*AT&T WS P*"); *AT&T Wireless Services, Inc.*, 17 FCC Rcd. 21866, 21871 ¶ 14 (2002) ("*AT&T WS IP*").

<sup>14</sup> See 47 C.F.R. Part 17, esp. §§ 17.1, 17.23; see also *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, WT Docket No. 95-5, *Report and Order*, 11 FCC Rcd. 4272, 4287 ¶ 35 (1995), *recon denied*, *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, WT Docket No. 95-5, *Memorandum Opinion and Order and Order on Reconsideration*, 15 FCC Rcd. 8676 (2000); "No Tolerance Policy Adopted for Unregistered Antenna Structures," *Public Notice*, 1999 WL 10060 (January 13, 1999); *Northern Electric Cooperative*, 19 FCC Rcd 19644, 19646 ¶ 14 (Enf. Bur. 2004).

forfeiture dismissed by reporting the demolition of its tower does not mitigate its failure to timely register its antenna structure.<sup>15</sup> FFP did not register its tower until May 17, 2004, more than three months after the Tampa Office notified it on January 26, 2004, and more than six years after it was required to have its tower registration completed.

8. The Commission expects that violations that are observed during inspection and/or that are the subject of an enforcement action will be corrected, and does not believe that subsequent corrective measures mitigate or warrant forfeiture cancellations or reductions for past violations.<sup>16</sup> Based on the record, we thus do not find that FFP's demolition of the tower warrants cancellation or reduction of the assessed forfeiture.<sup>17</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405(b) of the Act, and Section 1.106(f) of the Rules,<sup>18</sup> the request for reconsideration filed by Florida Food Products, Inc. former owner of an unlicensed antenna structure in Eustis, Florida, **IS DENIED**.

10. Payment of the three thousand dollar (\$3,000) forfeiture assessed by the *Forfeiture Order* shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>19</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>20</sup>

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<sup>15</sup> See, e.g., *Natchez Communications, Inc.*, 15 FCC Rcd 4628, 4629-4630, ¶¶ 7, 10 (Enf. Bur. 2000), *consent decree*, 16 FCC Rcd. 11,745 (Enf. Bur. 2001).

<sup>16</sup> See, e.g. *AT&T WS II, supra*, 17 FCC Rcd at 21875-76 ¶¶ 26-28 (finding that a downward adjustment of an aggregate forfeiture was not warranted, where the carrier lacked an effective antenna compliance program at the time of the violations and only corrected such violations after the Commission brought them to its attention); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994) (finding that a downward adjustment of a forfeiture was not warranted, where a public coast station operator discontinued unauthorized operations after the Notice of Apparent Liability was issued); *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶ 8 (1992); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03 ¶ 9 (Enf. Bur. 2003).

<sup>17</sup> In its request for reconsideration, FFP offered to pay a lower forfeiture amount, but it did not support the request for reduction of the proposed forfeiture with evidence of its inability to pay. See, e.g., *Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878-6879 ¶ 16 (2003) (finding that a request to reduce or cancel a forfeiture based on a claim of inability to pay should include detailed and relevant financial documentation, that the carrier did not provide such documentation, and that therefore there was no basis to reduce the total forfeiture on such grounds).

<sup>18</sup> 47 C.F.R. § 1.106(f).

<sup>19</sup> 47 U.S.C. § 504(a).

<sup>20</sup> See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Florida Food Products, Inc., P.O. Box 1300, Eustis, Florida 32727-1300.

**FEDERAL COMMUNICATIONS COMMISSION**

Kris Anne Monteith  
Chief, Enforcement Bureau